

 [Original Image of 289 N.W.2d 326 \(PDF\)](#)

95 Wis.2d 21  
Court of Appeals of Wisconsin.

**Matter of Parham**  
Court of Appeals of Wisconsin.    December 11, 1979    | 95 Wis.2d 21    | 289 N.W.2d 326    (Approx. 4 pages)

MILWAUKEE COUNTY, Appellant,  
v.  
Willie PARHAM, Respondent.

No. 79-641  
Submitted on Briefs Oct. 12, 1979.  
Opinion Released Dec. 11, 1979.  
Opinion Filed Dec. 11, 1979.

Synopsis


In emergency detention procedures, the Circuit Court, Milwaukee County, William J. Shaughnessy, J., dismissed case because officer who took respondent into custody was not same officer who signed detention statement, and county appealed. The Court of Appeals, Decker, C. J., held that under facts of case, where it could reasonably be concluded that both officers were in possession of knowledge of respondent's conduct that allegedly justified his detention and that either could be fully cross-examined with regard to detention procedure, there was no prejudice to defendant and procedures were in substantial compliance with statute.

Reversed.

West Headnotes (2)

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- 1

**Mental Health** 

Apprehension and custody pending determination

Person signing detention statement is not required to be same person who is listed as person who took respondent into custody under emergency detention procedures. [W.S.A. 51.15\(1, 4\).](#)

[2 Cases that cite this headnote](#)
- 2

**Mental Health** 

Apprehension and custody pending determination

Where detention statement on its face indicated that officers participated jointly in events preceding emergency detention and from statement it could be reasonably concluded that such officers were in possession of knowledge of respondent's conduct that allegedly justified his detention and either could be fully cross-examined with regard to detention procedure, there was no actual prejudice to defendant resulting from listing of one officer as arresting officer and another as individual preparing report and emergency detention statement and, thus, procedure was in substantial compliance with applicable statute; however, if it appeared in detention report that officer was not possessed of knowledge justifying detention, then dismissal of proceeding should have been granted. [W.S.A. 51.15.](#)

[1 Case that cites this headnote](#)

Attorneys and Law Firms

SELECTED TOPICS

Criminal Law  
  
Pretrial Proceedings  
    [Proper Execution of Arrest Warrants](#)

Secondary Sources

APPENDIX I-FEDERAL STATUTES

FDA Enforcement Man. Appendix I  
...Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or...

APPENDIX III-JUDICIAL OPINIONS

FDA Enforcement Man. Appendix III  
...No. 74-215 Supreme Court of the United States 421 U.S. 658; 95 S. Ct. 1903 2d 489 Argued March 18-19, 1975 June 9, 1975 Mr. Chief Justice Burger delivered the opinion of the Court. We granted certiorar...

[§ 43. Issuance and Contents of the Complaint](#)

1 Fed. Prac. & Proc. Crim. § 43 (5th ed.)  
...Federal Rule of Criminal Procedure 3 sets forth several requirements for a valid complaint: it must be in writing; it must be made under oath; and, it must contain the essential facts constituting the ...

[See More Secondary Sources](#)

Briefs

[Brief for the United States as Amicus Curiae](#)

1974 WL 185700  
Richard E. GERSTEIN, Petitioner, v. Robert PUGH, et al.,  
Supreme Court of the United States  
Oct. 05, 1974  
...The United States is filing a brief in this case as amicus curiae at the request of the Court. The issue in which the United States has an interest involves the question whether a defendant in custody ...

[Brief for the United States as Amicus Curiae](#)

1974 WL 174850  
Richard E. GERSTEIN, Petitioner, v. Robert PUGH, et al.  
Supreme Court of the United States  
Oct. 05, 1974  
...The United States is filing a brief in this case as amicus curiae at the request of the Court. The issue in which the United States has an interest involves the question whether a defendant in custody ...

[PETITIONER'S BRIEF ON THE MERITS](#)

1997 WL 203306  
Lynne Kalina v. Rodney Fletcher  
Supreme Court of the United States  
Apr. 25, 1997  
...FN\*Counsel of Record The decision of the United States Court of Appeals for the Ninth Circuit is reported at 93 F.3d 653 (9th Cir.1996). (J.A. 22-28). The district court's Minute Order denying summary...

**\*\*327 \*22** Robert P. Russell, Corp. Counsel, Milwaukee, with whom in the brief was Robert A. McKnight, Asst. Corp. Counsel, Milwaukee, for appellant.

Thomas K. Zander, Chief Staff Atty., mental health division, Milwaukee, with whom in the brief was Stuart Spielman, Asst. State Public Defender, Milwaukee, for respondent.

Before DECKER, C. J., MOSER, P. J., and CANNON, J.

## Opinion

DECKER, Chief Judge.

This case was dismissed by the trial court because the officer who took the respondent into custody under the emergency detention procedures set forth in [sec. 51.15 of the statutes](#) was not the same officer who signed the detention statement. We hold that under the specific facts of this case, there was substantial compliance with the statute and reverse.

On March 6, 1979, Officers Robert Haller and Robert Rawski were called to a laundromat where respondent was allegedly creating a disturbance. The respondent was taken into custody by Officer Rawski. <sup>1</sup> A detention **\*23** statement was prepared as required by [sec. 51.15\(4\)\(a\), Stats.](#) The statement listed Officer Rawski as the person taking respondent into custody; however, Officer Haller signed the detention report. Respondent argues that this disparity requires dismissal of appellant's petition under [sec. 51.15, Stats.](#) We disagree.

1 Respondent contends that [sec. 51.15, Stats.](#), mandates that the person signing the statement be the same person who is listed as the person who took respondent into custody. This construction is based upon the use of the phrase "an officer" in [sec. 51.15\(1\), Stats.](#), describing under what conditions and by whom an individual may be taken into custody, and the use of "the officer" in [sec. 51.15\(4\), Stats.](#), <sup>2</sup> pertaining **\*\*328** to the completion of the detention **\*24** report. Such a technical construction would undermine the very purpose the emergency procedures are designed to serve.

In construing statutes, our supreme court has stated "a 'cardinal rule in interpreting statutes,' namely that 'the purpose of the whole act is to be sought and is favored over a construction which will defeat the manifest object of the act.'" [Student Ass'n of UW-M v. Baum](#), 74 Wis.2d 283, 294-95, 246 N.W.2d 622, 627 (1976)." [Milwaukee County v. Department of Industry, Labor, and Human Relations](#), 80 Wis.2d 445, 453, 259 N.W.2d 118, 122 (1977). Further guidance is provided by the recent affirmation of the rule that "(w)here more than one construction of a statute is possible, the reasonable meaning, one which avoids absurd results, is to be preferred." [Jaeger Baking Co. v. Kretschmann](#), 87 Wis.2d 375, 383, 275 N.W.2d 97, 100 (Ct.App.1978). (Citations omitted.)

The legislative policy for the State Mental Health Act, Chapter 51, Stats., is contained in [sec. 51.001, Stats.](#) <sup>3</sup> This statute indicates that the emphasis is to be placed upon providing care and treatment of those with mental disorders through the least restrictive means possible. We find that this ultimate objective of providing treatment is frustrated by the construction urged by respondent.

**\*25** The due process guarantees, as stated in [sec. 51.20\(5\), Stats.](#), <sup>4</sup> applicable at the probable cause hearing stage, may be adequately protected without resorting to the invalidation of detention reports on nonprejudicial technicalities. The purpose of the detention statement is to provide notice to the person detained of the justifications for the detention, as well as provide notice of who will be called upon to testify in favor of commitment. To insure the fulfillment of this function, the report must be made by an individual with personal knowledge of the totality of events surrounding the detention and who will be available for cross-examination.

It has been repeatedly determined that the due process standard to be applied in involuntary commitment cases at the hearing stage is to be a flexible one, and need not be as strictly construed as that applied in criminal proceedings. See [Parham v. J. R.](#), 442 U.S. 584, 607, 99 S.Ct. 2493, 2506-07, 61 L.Ed.2d 101, 122 (1979); [Lessard v. Schmidt](#), 349 F.Supp. 1078, 1091-92 (E.D.Wis.1972) (three-judge court), Vacated on other grounds, 414 U.S. 473, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974), On remand, 379 F.Supp. 1376 (E.D.Wis.1974), Vacated on **\*\*329** other grounds, 421 U.S. 957, 95 S.Ct. 1943, 44 L.Ed.2d 445 (1975). Thus, in the absence of a showing of actual prejudice due to the listing of one

[See More Briefs](#)

## Trial Court Documents

### Jones v. City of Philadelphia

2002 WL 34682842  
Norman K. JONES, II, Plaintiff, v. CITY OF PHILADELPHIA et al., Defendant.  
United States District Court, E.D. Pennsylvania.  
Apr. 12, 2002

...AND NOW, this 10th day of April, 2002, upon consideration of plaintiff's Motion Notwithstanding the Verdict and/or for Judgment after Trial and in the Alternative for a New Trial Pursuant to Fed. R. Ci...

### Rev. Martin Fry v. Middletown Tp.

2003 WL 26075058  
REV. MARTIN FRY, v. MIDDLETOWN TOWNSHIP, et al.  
United States District Court, E.D. Pennsylvania.  
Mar. 12, 2003

...DATE: March 12, 2003 Now before me is Defendants' Motion for Summary Judgment. For the reasons that follow, this motion will be granted in part and denied in part. In this case, Reverend Martin Fry and...

### U.S. v. Ghearing

2019 WL 8227291  
UNITED STATES OF AMERICA, v. Gilbert Ross GHEARING, Defendant(s).  
United States District Court, M.D. Tennessee.  
May 17, 2019

...I, the complainant in this case, state that the following is true to the best of my knowledge and belief On or about the date(s) of January 21,2019; February 4, 2019 in the county of Clay in the Middle...

[See More Trial Court Documents](#)

officer as the arresting officer and \*26 another as the individual preparing the report in the emergency detention statement, no dismissal should be granted.

2 The detention statement on its face indicates that the officers participated jointly in the events preceding the detention of respondent:

On Tues. 3-6-79 at 12:25/pm We were dispatched to "trouble" with man at the laundramat (sic) 2484 W. Brown Street. Upon Our arrival We were met by and interviewed the manager there (below Mr. Howard) who informed Us that there was a man in the laundramat (sic) that was bothering other patrons, swearing and yelling loudly and he doesn't have any business there as he isn't washing cloths (sic). We then approached subject who was still loud and profane and attempted to interview him. Subject gave his name as Willie Parham B/M 11-13-53 and stated he didn't know his address. He was rambling on and on about nothing and began making threats to shoot several people in the area. He became very incoherent and went from a very emotional threatening state to laughter to talking to people that weren't there. Due to subject's actions and threats We feel subject to be a threat and should be detained.

Previous described incident occurred in City and County of Milwaukee and State of Wisconsin. (Emphasis supplied.)

From the statement it may be reasonably concluded that both officers were in possession of the knowledge of the respondent's conduct that allegedly justified his detention and that either could be fully cross-examined with regard to the detention procedure. Thus, there does not appear to be prejudice to the defendant, and it does appear that the purpose of the statute is fulfilled and that the procedure was in substantial compliance with the statute. However, should it appear in the detention report that the officer who signed the detention report was not possessed of knowledge justifying the detention, then a dismissal of the proceeding should properly have been granted.

Order reversed.

## All Citations

95 Wis.2d 21, 289 N.W.2d 326

### Footnotes

1 [Sec. 51.15\(1\), Stats.](#), provides:

51.15 Emergency detention. (1) Basis for Detention. (a) A law enforcement officer may take an individual into custody if the officer has cause to believe that such individual is mentally ill, drug dependent or developmentally disabled, and that the individual evidences:

1. A substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm;

2. A substantial probability of physical harm to other persons as manifested by evidence of recent homicidal or other violent behavior on his or her part, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do such physical harm on his or her part; or

3. A very substantial probability of physical impairment or injury to himself or herself due to impaired judgment, as manifested by evidence of a pattern of recent acts or omissions. The probability of physical impairment or injury may not be deemed very substantial under this subdivision if reasonable provision for the individual's protection is available in the community.

(b) The officer's belief shall be based on specific recent overt acts, attempts or threats to act or on a pattern of recent acts or omissions made by the individual and observed by or reliably reported to the officer.

[Sec. 51.15\(4\), Stats.](#), provides:

2

(4) Detention Procedure, Milwaukee County. (a) In counties having a population of 500,000 or more, the law enforcement officer shall sign a statement of emergency detention which shall provide detailed specific information concerning the recent overt acts, attempts or threats to act or the pattern of recent acts or omissions on which the belief under sub. (1) is based and the names of the persons observing or reporting such recent overt acts, attempts or threats to act or pattern of recent acts or omissions. The law enforcement officer is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The law enforcement officer shall deliver, or cause to be delivered, the statement to the detention facility upon the delivery of the individual to it.

3

[Sec. 51.001\(1\), Stats.](#), provides:

51.001 Legislative policy. (1) It is the policy of the state to assure the provision of a full range of treatment and rehabilitation services in the state for all mental disorders and developmental disabilities and for mental illness, alcoholism and other drug abuse. There shall be a unified system of prevention of such conditions and provision of services which will assure all people in need of care access to the least restrictive treatment alternative appropriate to their needs, and movement through all treatment components to assure continuity of care.

4

[Sec. 51.20\(5\), Stats.](#), provides:

(5) Hearing Requirements. The hearings which are required to be held under this chapter shall conform to the essentials of due process and fair treatment including the right to an open hearing, the right to request a closed hearing, the right to counsel, the right to present and cross-examine witnesses, the right to remain silent and the right to a jury trial if requested under sub. (11). The parent or guardian of a minor who is the subject of a hearing shall have the right to participate in the hearing and to be represented by counsel. All proceedings under this chapter shall be reported as provided in s. 757.55. The court may determine to hold a hearing under this section at the institution at which the individual is detained, whether or not located in the same county as the court with which the petition was filed, unless the individual or his or her attorney objects.

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